

This action is in response to the communication filed on 1/4/2010.

DETAILED ACTION

Response to Amendment

The declaration under 37 C.F.R. 1.131 filed on 1/4/2010 under 37 CFR 1.131 has been considered but is ineffective to overcome the Marolia et al. (US Patent Number 7,480,907) reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Marolia reference to either a constructive reduction to practice or an actual reduction to practice. In this case, the applicants' have submitted no evidence showing diligence, but rather has merely alleged that producing a provisional application between January 9th of 2003 and September 25th of 2003 is diligent. The examiner points the applicants' to MPEP Section 715.07(a), which states:

What is meant by diligence is brought out in *Christie v. Seybold*, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See *In re Nelson*, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention.

MBER Section 3138.06 states:

DILIGENCE REQUIRED IN PREPARING AND FILING PATENT APPLICATION

The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor. Conception was established at least as early as the date a draft of a patent application was finished by a patent attorney on behalf of the inventor. Conception is less a matter of signature than it is one of disclosure. Attorney does not prepare a patent

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1 application on behalf of particular named persons, but on behalf of the true inventive
2 entity. Six days to execute and file application is acceptable. Haskell v. Coleburne, 671
3 F.2d 1362, 213 USPQ 192, 195 (CCPA 1982). See also Bey v. Kollonitsch, 866 F.2d
4 1024, 231 USPQ 967 (Fed. Cir. 1986) (Reasonable diligence is all that is required of the
5 attorney. Reasonable diligence is established if attorney worked reasonably hard on the
6 application during the continuous critical period. If the attorney has a reasonable backlog
7 of unrelated cases which he takes up in chronological order and carries out expeditiously,
8 that is sufficient. Work on a related case(s) that contributed substantially to the ultimate
9 preparation of an application can be credited as diligence.).
10
11

12 In this case, the applicants' have failed to provide evidence of diligence and as such
13 constitutes a mere pleading.

14 Furthermore, MPEP Section 715.04 states who can make such a declaration. The
15 declaration has been made by a single inventor of the joint inventors, which is not permissible.
16 Rather, if the declaration is being made by the inventors of the claimed subject matter, all of the
17 inventors must make the declaration, not just a single inventor of the joint inventors.
18

19 As such, the declaration is not found persuasive.

20 ***Response to Arguments***

21 Applicant's arguments filed 1/4/2010 have been fully considered but they are not
22 persuasive. The arguments were pertaining to the declaration under 37 C.F.R. 1.131 which has
23 not been found persuasive for the reasons above. Therefore, the applicants' arguments are not
24 persuasive and the examiner has maintained the rejection of the claims under the previously
25 relied upon prior art.

26 All objections and rejections not set forth below have been withdrawn.

1 Claims 1-43 have been examined.

2

Claim Objections

4 Claims 15 and 20-22 are objected to because of the following informalities: The claims
5 recite the limitation "said set of data" which lacks antecedent basis in the claims. Appropriate
6 correction is required.

7 *Claim Rejections - 35 USC § 102*

8 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
9 basis for the rejections under this section made in this Office action:

10 *A person shall be entitled to a patent unless –*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15 Claims 1, 3, 5-14, 16, 17, 19-21, 23, 31-37, 40, 42, and 43 are rejected under 35
16 U.S.C. 102(b) as being anticipated by Marolia et al. (US Patent Number 7,480,907) hereinafter
17 referred to as Marolia.

18 Regarding claims 1 and 23, Marolia disclosed a method of authenticating a set of N
19 information blocks, said method comprising: obtaining an initial root key for a set of data
20 comprised of a plurality of blocks of data, said root key operable for authenticating said set of
21 data; calculating hash keys for said plurality of blocks of data so that each of said hash keys
22 corresponds to only one of said blocks of data and so that each of said blocks of data corresponds
23 to only one of said hash keys; storing said hash keys for said plurality of blocks of data; altering
24 one of said blocks of data so as to form a revised block of data; calculating a second hash key for

1 said revised block of data, wherein said revised block of data immediately prior to being revised
2 corresponds to a first hash key and wherein said first hash key is one of said hash keys for said
3 plurality of blocks of data; utilizing said stored hash keys, including said first hash key, to
4 calculate a check root key while utilizing said stored hash keys and said second hash key
5 substituted in place of said first hash key to calculate a new root key; comparing said check root
6 key with said initial root key; accepting said new root key if said check root key matches said
7 initial root key (Marolia Col. 13 Lines 4-23).

8

9 Regarding claim 3, Marolia disclosed calculating said revised hash value while
10 calculating said check hash value comprises: hashing said altered block of data so as to obtain a
11 first hashing result; storing said first hashing result in a processor; and then hashing the
12 corresponding unaltered block of data so as to obtain a second hashing result (Marolia Col. 13
13 Lines 4-23).

14 Regarding claim 5, Marolia disclosed that calculating said revised hash value while
15 calculating said check hash value comprises: utilizing a single processor to calculate said revised
16 hash value and to calculate said check hash value (Marolia Col. 13 Lines 4-23 Update Agent).

17 Regarding claim 6, Marolia disclosed performing a linear hash of said set of data by
18 hashing said N blocks of data in sequential order from block 1 to block N (Marolia Col. 12 Lines
19 35-39).

20 Regarding claim 7, Marolia disclosed hashing each of said N information blocks in said
21 set of N information blocks (Marolia Col. 13 Lines 4-23).

1 Regarding claim 8, Marolia disclosed storing said initial hash value in a processor
2 (Marolia Col. 13 Lines 4-23).

3 Regarding claim 9, Marolia disclosed storing a new value for at least part of one of said
4 N information groups (Marolia Col. 13 Lines 4-23).

5 Regarding claims 10 and 35, Marolia disclosed determining whether said check hash
6 value and said initial hash value are exactly the same (Marolia Col. 13 Lines 4-23).

7 Regarding claims 11 and 36, Marolia disclosed replacing said initial hash value with said
8 revised hash value (Marolia Col. 13 Lines 4-23).

9 Regarding claims 12 and 37, Marolia disclosed storing the new revised hash value in the
10 memory area previously occupied by the initial hash value (Marolia Col. 13 Lines 24-34).

11 Regarding claim 13, Marolia disclosed not accepting said revised hash value as a
12 replacement for said initial hash value if said check hash value does not match said initial hash
13 value (Marolia Col. 5 Lines 38-58).

14 Regarding claim 14, Marolia disclosed indicating a failure to authenticate (Marolia Col. 5
15 Lines 38-58).

16 Regarding claim 16, Marolia disclosed replacing said initial hash value with said revised
17 hash value (Marolia Col. 13 Lines 24-34).

18 Regarding claims 17 and 40, Marolia disclosed receiving as part of an initialization
19 routine a length of a data set to be hashed, wherein said data set is comprised of said N
20 information groups (Marolia Col. 13 Lines 4-23).

1 Regarding claims 19 and 42, Marolia disclosed initializing a processor so as to perform a
2 hashing routine (Marolia Col. 13 Lines 4-23).

3 Regarding claim 20, Marolia disclosed initializing a hashing routine by entering the
4 length of said N information blocks (Marolia Col. 13 Lines 4-23).

5 Regarding claims 21 and 43, Marolia disclosed dividing a set of data into the plurality of
6 blocks of data as said N information blocks (Marolia Col. 13 Lines 4-23).

7 Regarding claim 31, Marolia disclosed encrypting said hash keys for said plurality of
8 blocks; and storing said encrypted hash keys in memory outside of a processor (Marolia Col. 9
9 Lines 25-27).

10 Regarding claim 32, Marolia disclosed storing said hash keys for said plurality of blocks
11 in a processor (Marolia Col. 13 Lines 4-23).

12 Regarding claim 33, Marolia disclosed storing said root key inside a processor (Marolia
13 Col. 13 Lines 4-23).

14 Regarding claim 34, Marolia disclosed storing a new value for at least part of one of said
15 information groups (Marolia Col. 13 Lines 4-23).

16

17 ***Claim Rejections - 35 USC § 103***

18 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
19 obviousness rejections set forth in this Office action:

20 *A patent may not be obtained though the invention is not identically disclosed or
21 described as set forth in section 102 of this title, if the differences between the subject matter
22 sought to be patented and the prior art are such that the subject matter as a whole would have
23 been obvious at the time the invention was made to a person having ordinary skill in the art to
24 which said subject matter pertains. Patentability shall not be negatived by the manner in which
25 the invention was made.*

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2 Claims 2,4, 18, 22, 24, 28, and 41 are rejected under 35 U.S.C. 103(a) as being
3 unpatentable over Marolia. While Marolia did not specifically disclose parallel processing, it
4 was well known that processing can be accomplished concurrently in order to save time and
5 therefore would have been obvious to have done so. Furthermore, Marolia did not specifically
6 teach padding at least one of the information blocks such that all the blocks were of the same
7 length. However, it was well known to pad blocks when performing a hash operation such that
8 the blocks are the proper length for the hash operation. Therefore, it would have been obvious to
9 the ordinary person skilled in the art to have done so.

10 Claims 15, 25-27, 29-30, and 38-39 are rejected under 35 U.S.C. 103(a) as being
11 unpatentable over Marolia, and further in view of Sprunk et al. (US Patent Number 5,754,659)
12 hereinafter referred to as Sprunk.

13 While Marolia disclose a method for updating a hash for a file when a record in the file is
14 altered, Marolia failed to disclose the use of a branch key in the hashing system, or that the
15 system was used for signing digital media rights data.

16 Sprunk teaches an efficient hashing method including the limitations of claims 25-30, and
17 further teaches that the hashing system can be used to sign access right data (See Sprunk Col. 6
18 Line 50 – Col. 11 Line 14).

19 It would have been obvious to the ordinary person skilled in the art at the time of
20 invention to employ the teachings of Sprunk in the signature system Marolia. This would have
21 been obvious because the ordinary person would have been motivated to increase the efficiency
22 of the system.

1

Conclusion

2 Claims 1-43 have been rejected.

3 The prior art made of record and not relied upon is considered pertinent to applicant's
4 disclosure.

5 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time
6 policy as set forth in 37 CFR 1.136(a).

7 A shortened statutory period for reply to this final action is set to expire THREE
8 MONTHS from the mailing date of this action. In the event a first reply is filed within TWO
9 MONTHS of the mailing date of this final action and the advisory action is not mailed until after
10 the end of the THREE-MONTH shortened statutory period, then the shortened statutory period
11 will expire on the date the advisory action is mailed, and any extension fee pursuant to 37
12 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,
13 however, will the statutory period for reply expire later than SIX MONTHS from the mailing
14 date of this final action.

15 Any inquiry concerning this communication or earlier communications from the
16 examiner should be directed to MATTHEW T. HENNING whose telephone number is
17 (571)272-3790. The examiner can normally be reached on M-F 8-4.

18 If attempts to reach the examiner by telephone are unsuccessful, the examiner's
19 supervisor, William Korzuch can be reached on (571)272-7589. The fax phone number for the
20 organization where this application or proceeding is assigned is 571-273-8300.

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1 Information regarding the status of an application may be obtained from the Patent
2 Application Information Retrieval (PAIR) system. Status information for published applications
3 may be obtained from either Private PAIR or Public PAIR. Status information for unpublished
4 applications is available through Private PAIR only. For more information about the PAIR
5 system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR
6 system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would
7 like assistance from a USPTO Customer Service Representative or access to the automated
8 information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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11 /Matthew T Henning/
12 Primary Examiner, Art Unit 2431
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